

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Number Portability Query Services)

CC Docket No. 98-14

Ameritech Tariff F.C.C. No. 2,
Transmittal No. 1149, as Amended)

CCB/CPD 98-26

Bell Atlantic Tariff F.C.C. No. 1,
Transmittal No. 1041)

CCB/CPD 98-25

Pacific Bell Tariff F.C.C. No. 128,
Transmittal Nos. 1927 and 1973)

CCB/CPD 98-23

Southwestern Bell Tariff F.C.C. No. 73,
Transmittal Nos. 2638 and 2694;)

CCB/CPD 98-17

OPPOSITION TO DIRECT CASES

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SUMMARY

This proceeding is the second investigation of proposed BOC LNP query tariffs, and the second time the BOCs have refused the Commission's express demand that they provide adequate evidence to satisfy their burden of proof under 47 U.S.C. § 204. The direct cases present cursory, narrative descriptions of the data and assumptions underlying the tariffs -- and in many cases completely ignore issues that the Designation Order required them to address. In light of their patent inadequacy, both the Communications Act and Commission precedent require that all of the proposed tariffs be held unlawful.

Given the abject insufficiency of the instant tariffs, AT&T's opposition does not (and need not) attempt to point out all of the failings of the BOCs' transmittals nor to rebut all of the contentions in their direct cases. However, in order to help all parties move forward with LNP implementation, the Commission should decide the outstanding questions concerning LNP query service that AT&T addresses in this pleading. The majority of these questions also arose in the prior LNP query tariff investigation, and all of them are certain to emerge in any future proceeding concerning this service if they are not disposed of here. Given that these issues will have been thoroughly briefed (in most cases twice over), AT&T strongly urges the Commission to resolve them in the instant proceeding, rather than deferring them to a later tariff investigation.

As the Designation Order found, the proposed tariffs have included general overhead loading factors, in contravention of the Commission's LNP Cost Recovery Order. In addition, the BOCs offer grossly inadequate information concerning their calculation of overhead factors, and the factors they employ appear to be significantly inflated.

The BOCs also fail to provide meaningful data to justify the costs they attribute to LNP query service, and seek to recover costs that are not directly related to LNP, in violation of the Cost Recovery Order. Further, the proposed tariffs allocate portions of embedded investment to LNP query service, a practice that both violates the Commission's LNP cost recovery requirements and attempts to double-recover for costs that are already fully recovered through existing services.

Like the vast bulk of the proposed tariffs, the BOCs' query demand forecasts are not adequately supported. In addition, SBC and Bell Atlantic inflate their demand figures by seeking to charge for intraoffice queries, as well as for queries on calls to NXXs in which no numbers have ported.

Pacific and SWBT offer only the vaguest generalities to support their wildly inflated nonrecurring charges for default queries. There is no basis for these charges, as is confirmed by Ameritech's decision to withdraw similar nonrecurring charges in the prior LNP query tariff investigation, on the ground that it had identified ways to automate the billing processes that Pacific and SWBT assert will require a large (but unspecified) amount of manual intervention.

In this proceeding Ameritech again seeks to require its direct competitors to provide it with detailed forecasts of their call volumes, and again proposes to block prearranged as well as default queries. Its direct case adds no meaningful new data to its previous, inadequate claims. No other carrier that has filed an LNP query tariff has sought to impose similar requirements. Ameritech thus must argue that it alone recognizes the purportedly grave threat LNP poses to network reliability in the absence of detailed demand forecasting. It cannot carry this immense burden.

Finally, Bell Atlantic and SBC continue their quest to force other carriers to purchase utterly unnecessary LNP queries by tariffing an LNP query charge that would apply to every call delivered unqueried to an NXX in which LNP was available, without regard to whether any numbers have been ported in that NXX. Neither SBC nor Bell Atlantic, however, can explain away the indisputable fact that their proposed tariff would require queries to be performed for no valid purpose -- and would charge carriers a fee for this bogus "service." Such a result cannot possibly comport with the "just and reasonable" standard of § 204 -- and it does not comport with the Commission's prior orders and rules governing LNP. Although both SBC and Bell Atlantic assert that they cannot implement LNP without charging for queries that even they admit are useless, Ameritech has irrefutably rebutted this claim by confirming that it will do just that.

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OPPOSITION TO DIRECT CASES

Pursuant to the January 30, 1998 Order Designating Issues For Investigation ("Designation Order"),¹ AT&T Corp. ("AT&T") hereby opposes the direct cases filed by Ameritech, Bell Atlantic, Southwestern Bell ("SWBT"), and Pacific Bell ("Pacific")² concerning the lawfulness of their long-term number portability query service ("LNP query service") tariff filings. The BOCs have failed -- as they failed in the investigation of their previous LNP query

¹ Order Designating Issues For Investigation, Number Portability Query Services, CC Docket No. 98-14 (released June 17, 1998) ("Designation Order").

² Because SWBT and Pacific filed their direct cases jointly, this opposition will refer to those BOCs collectively as "SBC," their parent holding company.

service tariffs -- even to make a serious effort to carry their burden of proof in this proceeding. In light of the BOCs' continued refusal to accede to the Commission's clear and repeated directives to provide adequate cost support for their LNP query tariffs, neither the Commission nor commenters can make a reasoned determination that their proposed rates are just and reasonable. Accordingly, both the Communications Act and Commission precedent clearly require that all of the proposed tariffs be held unlawful.

Given the abject insufficiency of the instant tariffs, AT&T's opposition will not (and need not) attempt to point out all of the failings of the BOCs' transmittals nor to rebut all of the contentions in their direct cases, but will focus on certain critical issues. In addition, the instant tariffs have failed to correct many of the deficiencies found by the Commission and commenters in the previous LNP query tariff investigation. AT&T will not burden the Commission by repeating the arguments it made in that proceeding, but instead has attached its opposition to the BOCs' direct cases in that investigation as Exhibit 1 to this pleading, and incorporates that document herein by reference.³

³ AT&T, Opposition to Direct Cases, filed February 20, 1998, pp. 16-18, in Number Portability Query Services, CC Docket No. 98-14 (attached as Exhibit 1).

In order to help all parties move forward with LNP implementation, the Commission should decide the outstanding questions concerning LNP query service that AT&T addresses in this pleading in addition to declaring the proposed tariffs unlawful. The majority of these questions also arose in the prior LNP query tariff investigation, and all of them are certain to emerge in any future proceeding concerning this service if they are not disposed of here. Given that these issues will have been thoroughly briefed (in most cases twice over), AT&T strongly urges the Commission to resolve them in the instant proceeding, rather than deferring them to a later tariff investigation.

I. THE BOCS PLAINLY HAVE FAILED TO MEET THEIR BURDEN OF PROOF

This proceeding is the second investigation of proposed BOC LNP query tariffs, and the second time the BOCs have flatly refused the Commission's express demand that they provide adequate evidence to satisfy their burden of proof under 47 U.S.C. § 204. In suspending the BOCs' previous LNP query tariffs, the Commission made clear that those carriers had failed to provide adequate information to support their proposed charges, and directed them to provide such support in their direct cases.⁴ Despite this mandate, however, the BOCs made virtually no effort to justify their tariffs, leading the Commission to admonish in its order terminating that investigation that:

⁴ See, e.g., Memorandum Opinion and Order, Petition Of Ameritech To Establish A New Access Tariff Service And Rate Elements Pursuant To Part 69 Of The Commission's Rules, CCB/CPD 97-46, released October 30, 1997, ¶ 18 ("Ameritech and Bell Atlantic have not provided sufficient cost justification and other support to demonstrate the reasonableness of the proposed charges and rate structures.").

We take this opportunity to remind carriers that the burden to justify their proposed rates subject to investigation rests with them. Rather than provide the Commission and interested parties with sufficient data to evaluate the components and reasonableness of their charges, the carriers provided conclusory rates and brief narratives describing their methodologies. They did not provide sufficient information demonstrating the calculations they made to derive those rates.⁵

Despite the Commission's clear directives in the LNP Tariff Termination Order, the Designation Order finds the BOCs' current LNP query tariffs are also inadequate in many respects, and once again reminds those carriers of their obligations under the Communications Act.

In order to meet their burden under Section 204(a)(1) of the Act to show the reasonableness of the proposed charges, carriers must fully show the assumptions, methodologies, allocations, and specific costs supporting their proposed query service charges. Carriers in their Direct Cases must identify each cost proposed to be recovered, explain why it is a direct cost of providing number portability query service, and explain the methodology by which any portion of a joint or common cost is allocated to query service charges. All investments that are included in the direct cost of providing number portability must be clearly identified and explained. Carriers should state any assumptions they make regarding any portion of the query cost calculation including, but not limited to, assumptions about depreciation, cost of capital, and taxes.⁶

The Commission thus has made it abundantly clear, in two separate proceedings, what it requires from the BOCs in order to support their proposed LNP query tariffs. In spite of these directives, the direct cases once again present cursory, narrative descriptions of the data and

⁵ Tariff Investigation and Termination Order, Number Portability Query Services, CC Docket No. 98-14 (released March 30, 1998), ¶ 14 ("LNP Tariff Termination Order"). Pacific and SWBT withdrew their prior LNP query tariffs on the day that their direct cases were to have been due, while Bell Atlantic withdrew its prior tariff one week before the LNP Tariff Termination Order issued. That order held that Ameritech's prior tariff was unlawful on the grounds that Ameritech failed to make a sufficient showing to support it.

⁶ Designation Order, ¶ 10 (emphasis added).

assumptions underlying the tariffs -- and in many cases completely ignore issues that the Designation Order required them to address. Bell Atlantic's direct case, for example, is a mere 10 pages long, without a single supporting exhibit. Ameritech similarly fails to provide any new data in its direct case, instead attaching copies of its tariff and its filings in the Commission's previous LNP tariff investigation. Incredibly, Ameritech asserts (p. 1) that it responded to most of the Designation Order's requirements in its pleadings in the prior LNP query tariff investigation. The Commission itself provided an unequivocal rejoinder to this claim in the LNP Tariff Termination Order: "We find unlawful the tariff revisions contained in Ameritech Transmittal Nos. 1123 and 1130 because Ameritech failed to make a sufficient cost showing to justify the proposed rates."⁷

The BOCs also repeatedly attempt to argue that they may simply rely on materials presented in their tariff filings, despite the fact that the Designation Order (as well as the orders suspending each of the tariffs at issue) expressly found that those transmittals were not adequately justified. For example, SWBT asserts (p. 7) that its tariff's Description and Justification ("D&J") adequately explains its methodology for calculating overhead, although paragraph 6 of the Designation Order finds that it (and all of the other BOCs) included overhead loading factors that are prohibited by the LNP Cost Recovery Order.⁸

Ameritech also attempts to argue (p. 11) that its tariff filing provides sufficient detail regarding the methodology and assumptions it used to calculate its query service rates.

⁷ LNP Tariff Termination Order, ¶ 1.

⁸ Third Report and Order, Telephone Number Portability, CC Docket No. 95-116, FCC 98-82, released May 12, 1998 ("Cost Recovery Order").

This claim is facially untenable, as the Commission expressly designated as an issue for this investigation "whether the carriers' methodologies and assumptions used to develop their proposed rates are reasonable."⁹ Even apart from this fact, Ameritech's reliance on its tariff filing is insupportable. Ameritech calculates its total cost per query, before adding overheads, as \$.002948.¹⁰ However, fully 90% of this cost (\$.002652) is listed simply as "Other Direct Expenses." Ameritech's D&J (p. 5) offers a list of certain "cost elements" it claims are "associated with LNP Query Service," but Ameritech nowhere breaks out the specific costs of these elements, instead simply offering brief narrative descriptions of them. In light of the fact that, as the Designation Order noted (§ 10), Ameritech's per query charges are 3.6 times higher than SBC's, the stark lack of detail in Ameritech's filing is particularly damning.

The Commission's precedents clearly establish that a party's failure to adequately justify its tariff filing render that tariff unlawful.¹¹ In a ruling last year that is squarely on all fours with the instant investigation, the Commission rejected several tariffs on the grounds that the LECs filing them had refused to comply with its designation order's requirements that they provide additional cost support and explain their methodologies:

LECs that filed a physical collocation tariff generally failed to provide adequate support for their overhead loading factors. Partly as a result of the LECs' failure to explain and justify their overhead loading factors, the Bureau suspended and initiated an investigation into the LECs' physical collocation tariffs

⁹ Designation Order, § 9.

¹⁰ Ameritech, Amended Transmittal No. 1149, April 1, 1998, Exhibit 1.

¹¹ See, e.g., LNP Tariff Termination Order, § 13, n.46 (citing prior Commission decisions holding that failure to provide adequate supporting data renders tariff filing unlawful).

LECs that were required to provide physical collocation were given another opportunity to justify their overhead loading factors when they filed their direct cases in response to the Bureau's Designation Order. In that order, the Bureau directed the LECs to explain how they developed their overhead loading factors.... In response to the Designation Order, all LECs, including BellSouth, filed direct cases that failed to include all the information requested by the Bureau. Hence, despite repeated directions from the Bureau that LECs provide cost support and explanations for their overheads, the LECs failed to submit adequate cost justification for their high levels of overhead loadings....

Based on the current record, the LECs have failed to meet their burden of proof under Section 204(a) of justifying their proposed overhead loadings.... Accordingly, based on the current record, we must find the LECs' originally filed rates for expanded interconnection to be unlawful.¹²

The BOCs themselves concede that their tariff filings do not comply with the Commission's requirements. Bell Atlantic candidly admits on the first page of its direct case that "Bell Atlantic's tariff does not follow the rules that were prescribed after the tariff went into effect" -- that is, the regulations prescribed in the Cost Recovery Order. That admission alone is fatal to Bell Atlantic's tariff, even apart from its other deficiencies. Ameritech confesses (pp. 2-3) that "Some of the cost or demand numbers supporting the Query Service are not supported by a cost study that fully meets the Commission's latest requirements," thereby also conceding that its transmittal is unlawful.¹³ SBC also effectively admits that its tariff does not meet the

¹² Second Report and Order, Local Exchange Carriers' Rates, Terms, And Conditions For Expanded Interconnection Through Physical Collocation For Special Access And Switched Transport, 12 FCC Rcd. 18730 (released June 13, 1997), ¶¶ 405-07.

¹³ Ameritech argues, however, (p. 2) that the Commission should simply leave its LNP tariff in place until it opts to file revised cost support sometime "much later this year." The Commission should reject this proposal outright. Section 204(a)(2)(A) of the Communications Act requires the Commission to resolve this investigation within five months after the date the LNP query tariffs take effect. After that time, the BOCs are likely to contend that the Commission no longer has the power to continue in effect the accounting order established for this proceeding or to order retroactive adjustments to the

Commission's requirements by devoting a substantial portion of its direct case (pp. 4-9) to defending its own treatment of overhead costs -- and attacking the Cost Recovery Order's treatment of overhead factors as "economically inappropriate."¹⁴

The BOCs also argue at several points that because other entities will also be providing LNP query services, they should be permitted to tariff whatever rates they wish.¹⁵ As a preliminary matter, it is not clear that there will in fact be an alternative to the incumbent LEC in all cases in which competing carriers may want or need to purchase LNP query service. More importantly, the Commission already has determined that it is appropriate to require ILEC monopolists to tariff LNP query services at cost-based rates,¹⁶ and the BOCs' attacks on that

(footnote continued from previous page)

tariffed LNP query rates, even if those charges are unreasonable or are contrary to its cost recovery rules. Such a result would be both irrational and unjust, as it would deprive carriers that must purchase LNP query services from the instant tariffs of all legal remedies against overcharges. To prevent that result, the Commission should reject the tariffs under investigation in this proceeding and order the BOCs to re-file new LNP query service tariffs.

¹⁴ Even if SBC's argument were not otherwise without merit, it is plainly irrelevant to the instant tariff investigation. SBC is, of course, free to seek reconsideration of the Cost Recovery Order -- but it may not do so in this proceeding. In all events, given that the Commission received literally hundreds of comments, replies, and ex parte filings on the subject of LNP cost recovery, it is difficult to imagine what arguments SBC could present on reconsideration that were not, or could not have been, previously offered on this subject.

¹⁵ See, e.g., SBC, p. 3.

¹⁶ See, e.g., Cost Recovery Order, ¶ 9.

decision have no bearing on the instant proceeding.¹⁷

II. THE PROPOSED TARIFFS INCLUDE IMPERMISSIBLE OVERHEAD LOADING FACTORS

The recent Cost Recovery Order expressly prohibited the use of general overhead factors in calculating LNP costs.

Because carrier-specific costs directly related to providing number portability only include costs carriers incur specifically in the provision of number portability, carriers may not use general overhead loading factors in calculating such costs. Carriers already allocate general overhead costs to their rates for other services, and allowing general overhead loading factors for long-term number portability might lead to double recovery. Instead, carriers may identify as carrier-specific costs directly related to providing long-term number portability only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability.¹⁸

However, as the Designation Order found (§ 6), "[i]n the cost justification for their proposed tariffs, Ameritech, Bell Atlantic, Pacific Bell, and Southwestern Bell have included general overhead loading factors." The BOCs do not, and cannot, refute this finding.

Bell Atlantic frankly admits (p. 2) that it "included general overhead factors in calculating its costs," and in defense offers only the bare assertion that because it filed its tariff before the Commission issued the Cost Recovery Order, it should not be required to refund any overcharges to its LNP query service customers, even though its tariff is therefore unlawful. It is hardly surprising that Bell Atlantic cites no authority of any kind for this proposition, which is as

¹⁷ It is, moreover, ironic that the BOCs argue both that the market for query services is competitive and that they are permitted unilaterally to force other carriers to purchase unnecessary queries by charging for that entirely superfluous "service" on all calls to NXXs in which portability is available, even if no number has in fact been ported in that NXX. See infra Section VII.

¹⁸ Cost Recovery Order, § 73 (emphasis added).

novel as it is unjust. Furthermore, the Commission's order suspending Bell Atlantic's current query tariff recognized that the LNP cost recovery proceeding was then ongoing, and stated unequivocally that the tariff "will be subject to any decisions of the Commission in that proceeding."¹⁹

Not only did Bell Atlantic utilize an impermissible general overhead factor, it appears to have used an unreasonably large -- and completely unsupported -- factor as well. That BOC responds (p. 4) to the Commission's requirement that it explain its rate "markups"²⁰ only by asserting (without support) that its figures "are in the reasonable range" and are "consistent with rates in other tariffs" (which it does not identify). Bell Atlantic's tariff states that the difference between its costs to provide tandem queries and its rate for that service is 31%, while the difference between its end office query costs and that rate is 54%. However, prior to adding these markups, Bell Atlantic calculated a purported unit cost which included their costs of investment (depreciation, cost of money, income tax, maintenance, RTU, administration, ad valorem tax and "other"), local transport and direct expenses. Bell Atlantic then went on to add its unsupported 54% and 31% markups, which appear to represent pure profit.

Like Bell Atlantic, Ameritech does not contend that its rates reflect its incremental costs of providing LNP query service, arguing only that its "overhead factor provides a reasonable estimate of average overhead costs until actual incremental costs are determined," and stating that

¹⁹ Memorandum Opinion and Order, Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1041, CCB/CPD 98-25, DA 98-686 (released April 9, 1998), ¶ 8.

²⁰ See Designation Order, ¶ 9.

it will provide further cost support in its August comments in the LNP cost recovery proceeding.²¹ Ameritech also continues to claim that it did not use fully distributed costs ("FDC"), but this assertion is baseless. Ameritech states that it used historical costs from 1996 ARMIS reports to grow its (completely unsupported) direct unit cost annual cost factor. Essentially, Ameritech's methodology results in an overhead factor that mirrors historical fully distributed costs for 1996. If anything, this factor will be overstated because, among other reasons, Ameritech's overall costs have almost certainly been trending downward since 1996, and because its calculations use total direct and indirect costs to build its FDC factor. This factor therefore includes expenses that are neither incurred in, nor incremental to, providing LNP query functions (e.g., marketing costs).

As noted above, SBC's approach to the overhead issue (pp. 4-9) is simply to ignore the requirements of the Designation Order and instead attack the Cost Recovery Order's holding that ILECs may not use general overhead factors in calculating their LNP query charges. However, as shown above, SBC's desire to rewrite the Cost Recovery Order is -- in addition to being without merit -- irrelevant to the instant tariff proceeding.

The information SBC does provide about its overhead calculations is grossly inadequate. SWBT first adverts (pp. 7-8) to its original tariff filing, which the Designation Order found to provide insufficient justification. That BOC then asserts -- without support of any kind -- that it is today underrecovering its general overhead costs and so must allocate a portion of those costs (which include expenses such as marketing and other costs completely unrelated to

²¹ Ameritech, p. 5 (emphasis added).

LNP) to its LNP query services. Pacific's (p. 8) arguments are, if anything, even more inadequate, as that BOC merely asserts in a single sentence that it followed an unspecified methodology that it previously employed in a proceeding before the California PUC.

III. THE PROPOSED TARIFFS SEEK TO RECOVER INVESTMENTS THAT ARE NOT DIRECTLY RELATED TO PROVIDING LNP QUERY SERVICES

Paragraph 7 of the Designation Order expressly directed the BOCs to provide specific and detailed information to support their allocation of costs to their query service charges:

Carriers have generally failed to show adequately that the costs they propose to recover in their query service charges are costs directly related to providing prearranged and default query services. For example, none of the carriers distinguished the OSS costs incurred directly for the provision of portability from those incurred to support other functions, such as maintenance or directory services. It is not clear how SS7 costs were allocated between portability services and other services. More generally, to the extent carriers propose to base charges on a portion of joint or common costs used to provide both number portability query services and other non-number portability services, carriers have failed to provide an adequate explanation of why the portion allocated to query services is reasonable or constitutes a direct cost of providing number portability query service.

On the issue of allocating investment costs, the BOCs once again fail even to shoulder, much less to carry, their burden of proof.

OSS Expenses. Bell Atlantic offers (p. 2) only anecdotal information about its OSS expenditures, expressly stating that the expenses it describes are provided only "[f]or example." Plainly, offering up a few "examples" cannot be squared with the Designation Order's requirement (§ 10) that "[a]ll investments that are included in the direct cost of providing number portability must be clearly identified and explained." Moreover, the "examples" Bell Atlantic provides of system costs it seeks to recover via its LNP query tariff include functions such as service order administration, network surveillance and monitoring, maintenance, and billing -- all

of which Bell Atlantic would have been required to build and maintain whether or not it provided LNP query services to other carriers.²²

Like Bell Atlantic, SBC (p. 17) attempts to include in its OSS expenditures ordering systems and other functions that are not necessary to provide LNP query services. SBC's Appendix A purports to list the OSS modifications for which it seeks to recover its costs, but nothing in that document or elsewhere in SBC's direct case gives the dollar impacts of those specific modifications, instead offering only narrative descriptions. It is also plain that many of the systems in SBC's Appendix A have nothing to do with providing LNP query service -- for example, the first systems listed in that document relate to maintenance of white pages listings.

Ameritech (p. 6) fails to provide any new information on OSSs, and instead merely refers to its initial tariff filing and states (with no support) that it included only direct costs in developing its LNP query rates.

SS7 Expenses. The BOCs also fail to provide sufficient detail concerning their allocation of SS7 investments. The information they do provide, however, only serves to further establish that their query tariffs are deeply flawed. Bell Atlantic states that it

utilized a model that developed the average unit per busy hour octet investment for each service that used the pre-existing SS7 network, allocating to each service a portion of the investment based on its usage of the network. To get its total SS7 number portability investment, Bell Atlantic added to this figure the amount of new SS7 investment that would be required to handle number portability signaling.²³

²² The Designation Order found (§ 7) that the BOCs "have generally failed to show adequately that the costs they propose to recover in their query service charges are costs directly related to providing prearranged and default query services."

²³ Bell Atlantic, p. 3 (emphasis added).

As a preliminary matter, Bell Atlantic does not provide the "model" to which it refers.

Accordingly, it is impossible for the Commission or commenters to evaluate it, and Bell Atlantic therefore has failed to carry its burden of proof under § 204.

Furthermore, the Designation Order (§ 8) specifically singled out Bell Atlantic's failure to explain its allocation of investment costs on the ground that it improperly included its embedded costs.

Bell Atlantic provides many worksheets, but has not explained them or shown that its calculations include only the costs of providing portability services. In particular, they include substantial amounts of "embedded network investment," the costs of which may be already recovered in other rates.

The above-quoted portion of Bell Atlantic's direct case confirms that it allocated a portion of its embedded SS7 investment to its LNP query service, and then added the purported incremental costs of its SS7 investments required for portability. Such an approach fails to comport with both the Cost Recovery Order and the Designation Order, and seeks to double-recover for Bell Atlantic's embedded investments. ILECs' investments in existing facilities are already being recovered through their current rates, as the Designation Order recognizes.²⁴ Accordingly, Bell Atlantic may not consider its embedded asset base in calculating its LNP query rates. In addition, the Cost Recovery Order prohibits ILECs from attributing the entire cost of new investments to

²⁴ See Designation Order, § 8 (Bell Atlantic "include[s] substantial amounts of 'embedded network investment,' the costs of which may be already recovered in other rates").

LNP if those investments also will support other services,²⁵ and Bell Atlantic has failed to demonstrate that it has properly identified and allocated its incremental costs to implement LNP.²⁶

As it did with its OSS costs, Ameritech (pp. 7-8) fails to provide the information required by the Designation Order, stating only that its SS7 costs were developed using a "model" that it does not provide, and that it describes only in passing. The information Ameritech does offer, however, makes clear that it also has attempted to recover embedded SS7 costs, as that BOC bases its cost information on the usage of its existing SS7 network to provide LNP, not on the incremental costs of any upgrades necessary to provide that service.²⁷

SBC provides only the vaguest generalities to support its SS7 investments. For example, although it states (p. 15) that SWBT's SS7 costs "are supported by various studies conducted by switch vendors," it fails to provide those studies -- or even to describe them in any meaningful way. SWBT similarly fails to offer any information about its purported internal analyses of its SS7 costs. Given the paucity of information SBC provides, it is simply impossible for either the Commission or commenters to determine the true size of SBC's SS7 investments.

Other Issues: The Designation Order (¶ 9) expressly directed Bell Atlantic to explain why its end office query charge is roughly five times its tandem query rate. In response,

²⁵ Cost Recovery Order, ¶ 73.

²⁶ See Designation Order, ¶ 7 ("to the extent carriers propose to base charges on a portion of joint or common costs used to provide both number portability query services and other non-number portability services, carriers have failed to provide an adequate explanation of why the portion allocated to query services is reasonable or constitutes a direct cost of providing number portability query service").

²⁷ See Ameritech, pp. 7-8.

that BOC offers (pp. 4-5) no additional documentation of its development of these charges other than to state that it seeks to recover unspecified "additional switching and transport" -- costs which may well be sunk investments for purposes pricing LNP queries. In addition, while the largest single component of the difference between Bell Atlantic's end office and tandem query rates is transport costs, Ameritech stated in its reply in the Commission's previous LNP query tariff investigation that it "did not even consider transport costs in calculating its Query Service rates because, for the most part, those facilities are already in place."²⁸

In response to the Designation Order's requirement (§ 8) that it justify its proposal to allocate 15% of its alleged total LNP costs to LNP query services, SBC offers three arguments, all of which are meritless. First, SBC states (p. 11) that its initial tariff filing projected that 17.3% of queries would come from carriers other than itself. This point is a sheer non sequitur. Even accepting SBC's demand forecasts arguendo (although the Designation Order expressly holds (§ 11) that they have not been adequately justified), SBC provides no basis to assume that query demand can or should serve as a proxy for allocating total LNP costs to query services. Moreover, to the extent that query demand could serve that function, SBC's own calculations show that other carriers' queries represent 17.3% of its total query volume, not the 15% figure it actually employs.

Second, SBC asserts that AT&T previously has supported allocating 15% of LNP costs to IXC's, and cites a September 25, 1997 AT&T ex parte in support of that claim. This

²⁸ Reply Comments of Ameritech, filed February 27, 1998, p. 10 in Number Portability Query Services, CC Docket No. 98-14.

contention is, at best, extremely disingenuous. The ex parte letter SBC cites is attached to this pleading as Exhibit 2.²⁹ That document states only that if the Commission were to permit ILECs to recover their LNP costs through direct charges to other carriers (a result AT&T opposed and which the Cost Recovery Order rejected), then the separations process would dictate that approximately 15% of those costs be allocated to the interstate jurisdiction, with access charges serving as the only means available to recover those interstate charges. This point in no way supports SBC's contention that it should be permitted to allocate 15% of its purported LNP costs to query services without providing adequate support for that proposal.

Third, SBC makes the bizarre argument (p. 12) that the Commission has already "approved" an Ameritech LNP query tariff that contains the same 15% cost allocation. In fact, the Commission rejected Ameritech's prior LNP query tariff and is investigating Ameritech's most recent query tariff in the instant investigation.

IV. THE PROPOSED TARIFFS FAIL TO JUSTIFY THEIR QUERY DEMAND FORECASTS

Paragraph 11 of the Designation Order finds that the BOCs "present[ed] their [query demand] projections without adequately explaining how they were developed." In response, Bell Atlantic adverts (pp. 5-6) to the description of its methodology in its tariff filing (despite the Designation Order's finding that this description is inadequate), and offers a brief narrative unencumbered by any actual data. Bell Atlantic also states (p. 6, n.11) that its demand

²⁹ Letter from Frank S. Simone, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, Federal Communications Commission, September 25, 1997 (attached as Exhibit 2).

projections include "intraoffice queries." However, LRN-based portability does not require carriers to launch queries when a call terminates in the same end office from which it originates.³⁰

Thus, to the extent that Bell Atlantic included "intraoffice queries" in its demand forecast, it has either overestimated its demand figures, or else intends to charge other carriers for an even greater number of unnecessary queries than AT&T previously supposed. SBC also appears to include intraoffice calls in its demand estimates, as Appendix B to its direct case states that "Once an NXX is listed in the LERG as being portable, all call attempts to that NXX will be queried."³¹ Ameritech's direct case provides no meaningful new information as to its methodology for estimating its anticipated query volumes, but simply offers further narrative description.

To the extent that SBC and Bell Atlantic assume that they will query all calls to each NXX designated as portable, even before the first number ports in that NXX, they have significantly overstated their demand figures.³² Although these BOCs have attempted in the past to argue that reducing their demand projections will merely require them to spread the same costs of LNP query service over a smaller base of queries, thereby increasing the price of each query, this analysis is far too simplistic. First, because SBC's and Bell Atlantic's cost estimates are based on these inflated demand figures (e.g., their allocation of SS7 costs is keyed to their demand assumptions), their cost figures inevitably are inflated as well.

³⁰ See, e.g., Illinois Number Portability Workshop, Generic Switching and Signaling Requirements for Number Portability, Issue 1.05, August 1, 1997, Section 2.1.2.

³¹ SBC Appendix B, p. 1 (emphasis added).

³² See infra, Section VII.

Second, the claim that reducing query demand projections merely increases the per-query price necessarily concedes a crucial point. If performing queries only for calls to NXXs in which at least one number has been ported will not affect an ILEC's costs, then ILECs' protests that querying only such calls will be "inefficient" or "unnecessarily costly" cannot be taken seriously, as by their own reckoning any added burden will be so insubstantial that it will not cause any additional expense.³³

Third, Bell Atlantic's and SBC's proposal to perform unnecessary queries for every call delivered to a portable NXX very likely will affect not only the number of queries purchased by each carrier, but the identity of those customers as well. Carriers such as AT&T that intend to perform their own LNP queries may nevertheless need to purchase LNP query service from other carriers if they are temporarily unable to perform queries for technical reasons.³⁴ If LECs nationwide were permitted to charge for LNP queries on all calls to NXXs designated as portable, an N-1 carrier that had designed its systems to comply with the different requirements established by the Commission's rules³⁵ might experience capacity and congestion problems until it could

³³ Compare Bell Atlantic, p. 8 ("it would be extremely inefficient and unnecessarily costly for Bell Atlantic" to query only NXXs in which at least one number has been ported) with id., p. 9 (if it queried only NXXs in which at least one number has been ported, "it is not clear to Bell Atlantic that the economic effect of this process would be any different from the existing process -- that the same carriers would not end up paying Bell Atlantic the same amount of money.") (emphasis added).

³⁴ Although AT&T will perform its own LNP queries for its wireline services, AT&T Wireless Services intends to purchase query services for some time following implementation of LNP.

³⁵ See infra, Section VII; Exhibit 1, pp. 7-9; Exhibit 3; Exhibit 4.

adjust to the sudden, tremendous volume of queries that it would be required to perform under SBC's and Bell Atlantic's version of LNP policy, and accordingly that N-1 carrier might be forced to purchase LNP query services that it could have self-provisioned under the rules established by the Commission.

V. PACIFIC AND SWBT FAIL TO JUSTIFY THEIR PROPOSED NON-RECURRING CHARGES

Paragraph 9 of the Designation Order found that "Pacific Bell and Southwestern Bell have not explained why their 'non-recurring' billing charges need to be applied each month to default carriers, and have not adequately justified the level of this charge." In addition, the order found (¶ 9) that "Pacific also proposes substantial non-recurring charges for pre-arranged database services, but has not explained what costs are incurred nor adequately justified these rate levels. We note that no other carrier has proposed similar charges."

SWBT asserts (pp. 12-13) that it calculated its default billing charge by "obtain[ing] average work times from experienced subject matter experts" to perform three categories of generalized tasks: "investigat[ing]" default query usage, "contact[ing] the carrier, if necessary," and "set[ting] up" billing. This information is plainly inadequate to justify the charges in question. Neither SWBT's direct case nor its tariff filing state the specific times it allotted to each of the tasks it asserts result in its default billing charge, or the actual labor rates it used to derive those charges. Pacific (pp. 13-14) also fails to provide more than vague generalities underlying either of its nonrecurring charge types, offering for example that "Task occurrence factors (how frequently a task is performed) and work group occurrence factors (how frequently a work group is involved in an average service order) were developed." The actual figures